(1997) 03 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

Shyam Gas Company APPELLANT

Vs

National Insurance Co.Ltd RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Citation : 1997 2 CPJ 182

Hon'ble Judges : V.K.Mehrotra , Banarsi Das J.

Final Decision : Appeal dismissed

Judgement

1. BY this appeal the complainant-appellant challenges the order dated 19.12.1994 passed by District Forum, Aligarh in Complaint Case No. 191 of 1992.

2. THE complainant had an insurance policy from the National Insurance Company Ltd., and during its currency a theft took place on May 25, 1990 in his godown from where 188 Gas cylinders were stolen. THE complainant made a report to the police on the same day and also informed the Insurance Company about the theft which deputed a Surveyor on 28.5.90. THE Surveyor submitted a report dated 7 October, 1991 and the Insurance Company repudiated the claim by its letter of 2 January, 1992. A complaint was filed before the District Forum on 21.4.92, in which 2 affidavits sworn on 21 August, 1992, and 26 August, 1993 were also filed by the complainant. In the First Information Report it was mentioned by the complainant that he had every reason to believe that his Chowkidar Sher Singh had committed theft and had sold away 188 Gas cylinders. Taking into account the statement so made in the First Information Report the claim was repudiated by the Insurance Company on the basis of the exclusion clause contained in the policy conditions which read as under: "Loss or damage occasioned by or with the connivance of the insured or his family member or business staff or servant or any person lawfully in the business premises the risk is not covered."

In the complaint and more precisely in the affidavits filed subsequently the complainant took the stand that while lodging the First Information Report he was not in a fit mental condition and had erroneously described Sher Singh as his chowkidar though the fact was that Sher Singh was employed as a Chowkidar in a nearby brickkiln and was being paid only a sum of Rs. 300/-per month by the complainant also to keep a watch over the godown.

3. QUITE apart from the fact that the version that Sher Singh was not the complainant''s Chowkidar came into existence long after the repudiation of the claim on 2.1.92 the fact remains that Sher Singh was looking after the godown of the complainant under authority from the complainant, as such, the exclusion clause was fully attracted. It has been urged that there has been delay in settling the claim, though by repudiation, on the part of the Insurance Company. In the circumstances of the present case, it is not possible to take the view that in the repudiation made within three months of receipt of the Surveyor''s report any deficiency in service on account of delayed disposal of the claim can be attributed to the Insurance Company.

4. IN the last resort it was urged by the learned Counsel for the appellant that since the order passed by the District Forum was made by each of the Members and the President of the Forum on different dates it was liable to be set" aside as being contrary to the provisions of Section 14(2)/(2A) of the Consumer Protection Act 1986. Reliance has been placed upon the decision of the Rajasthan State Commission in the United INdia INsurance Company Ltd. v. Duli Chand, II (1993) Consumer Protection Judgments, 676. Prima facie, the submission is well-founded and finds support from the decision of the Rajasthan Commission. However, since on merits we find no infirmity in the ultimate order of the District Forum negativing the challenge to the repudiation of the claim on a proper ground, we are not inclined to set aside the order of the District Forum on the technical submission made by Mr. Rakesh Kumar Gupta, Advocate on behalf of the appellant. We may add that we are refraining from making any further observation about the rival versions put forward by the complainant relating to Sher Singh for we are informed that the criminal case against him is still pending before a Competent Court. We are also not noticing any other submission on the merits of the claim attempted to be raised by Mr. Gupta nor expressing any opinion thereon lest it may prejudice the case pending before the Criminal Court. We may add that Mr. Vineet Srivastava, Advocate has appeared before us on behalf of the Insurance Company. In conclusion, the appeal fails and is dismissed but without any order as to costs.

5. LET copies of the order be made available to the learned Counsel for the parties as per rules. Appeal dismissed.

